appellant were not attempting to do the very thing which they were prohibited expressly from doing so by section 6 of the Act (see Lord Cairns L.C. in *Ashbury Carriage Co.* v. *Riche*[28]). It was not a question of doing indirectly the very thing which they were prohibited by section 6 of the Act from doing directly.

For the above reasons, I am unable to agree with the learned judge that a superadded condition or limitation should be implied into section 6 of the Act. I can find no justification for adopting this view in any of the authorities. Nor, if such binding authority existed, could it be easily justified in the face of the clear wording of the section. In my opinion, the onus of proving that such additional words or phrases ought to be imported into section 6 rests on the respondent and they have failed to discharge it.

I would therefore agree with the construction put to section 6 of the Act by the appellant that CIC approval of the takeover schemes need not be obtained before the provisions of section 179(2) of the Companies Act 1965 can be implemented and that CIC approval may be given after takeover notice has been given to the respondent and/or takeover offer has been forwarded to the shareholders of the respondent. In my opinion, section 6 of the Act cannot be properly extended so as to embrace a situation which Parliament could easily have provided if it had been its intention to do so. It cannot have been the intention of the legislature to superimpose a further condition or limitation into the section which Parliament had omitted by design.

The other ground of appeal argued by learned counsel for the appellant was that the learned judge erred in law in holding that the respondent have a *locus standi* to institute these proceedings against the appellant in a takeover exercise made pursuant to section 179(2) of the Companies Act 1965. In my opinion, since the statutory takeover notice under section 179(2) has to comply with the requirements of Part B of the Tenth Schedule to the Companies Act 1965 and has to be despatched by the appellant to the respondent, the respondent have a sufficient interest to give them the necessary *locus standi* to take legal action to challenge the validity of the takeover notice. However, having regard to the limited construction put to section 6 of the Act by me I express no opinion whether the respondent have the requisite *locus standi* to institute legal proceedings against the appellant regarding (a) the takeover offer which the appellant have to send to the shareholders of the respondent and only notice in writing that offers have been made under the scheme and the date of the offers need be sent to the respondent (see section 179(5) or (b) to apply for an interlocutory injunction in respect of the said matter.

In the result and for the reasons given, I would allow the appeal with costs here and in the Court below and set aside the interlocutory injunction granted by the learned judge.

Appeal dismissed.

Solicitors: *Zain & Co.; Shearn Delamore & Co.*

PUBLIC PROSECUTOR v. OH TECK SOON

[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Hashim Yeop A. Sani S.C. JJ.) October 28 & December 2, 1985]

[Kuala Lumpur – Supreme Court Criminal Reference No. 3 of 1985]

Criminal Law and Procedure – Prosecution for offences under Copyright Act, 1969 – Whether barred if instituted more than six months after seizure of videotapes, the subject matter of charge – Copyright Act, 1969, ss. 15(1), 15(2) & 15(4).

Copyright – Prosecution under Copyright Act – Copyright Act, 1969, s. 15(4).

In this case the Police on July 16, 1981 raided certain premises in Ipoh and seized copies of video tapes under a warrant issued by a Magistrate under section 15(4) of the Copyright Act, 1969. The accused was arrested and charged the same day for offences under the Copyright Act. After a number of postponements the accused was discharged on September 14, 1982, the discharge not amounting to an acquittal. Subsequently the accused was arrested on a warrant of arrest issued by the Magistrate and he was produced before the Magistrate on December 1, 1982. The same two charges were proferred against him. A preliminary objection was raised that the prosecution was out of time. The learned Magistrate was of the view that the second prosecution was a continuation of the first prosecution and as such was not caught by the six-month period under section 15(4) of the Copyright Act. He overruled the preliminary objection. The accused appealed to the High Court. The learned Judge of the High Court held that although the appeal was on a preliminary point it was a question of jurisdiction and therefore the appeal was in order. He held that the second prosecution should not be construed as a continuation of the first one. The proceedings which were instituted within six months of the seizure of the tapes terminated when the accused was discharged. As the second

proceedings were not instituted within the six-month period the Magistrate's Court had no jurisdiction to take cognisance of the offences with which the accused was charged on the second occasion. He therefore acquitted and discharged the accused – see [1985] 1 M.L.J. 437. The Public Prosecutor thereupon referred the following question to the Supreme Court – "Whether by virtue of section 15(4) of the Copyright Act 1969, the prosecution is barred by law from instituting a criminal charge against any person under section 15, six months after the seizure of the video tapes, the subject matter of the charge."

Held: the central subject of section 15(4) of the Copyright Act, 1969, is the return or disposal of the infringing copies or contrivance seized under that provision. It would be wrong to construe section 15(4) of the Act as a provision laying down a time-table for prosecution. The answer to the question posed is therefore in the negative.

SUPREME COURT.

Mohtar Abdullah, Senior Federal Counsel, for the applicant.

Hira Singh for the respondent.

Cur. Adv. Vult.

Hashim Yeop A. Sani S.C.J. (delivering the Judgment of the Court) : We already answered the question for reference under section 66(1) of the Courts of Judicature Act in the negative and now give our reasons. The question reads as follows:

"Whether by virtue of section 15(4) of the Copyright Act 1969, the prosecution is barred by law from instituting a criminal charge against any person under section 15, six months after the seizure of the video tapes, the subject matter of the charge."

It is obvious that the question was allowed because of the uncertainty shown in the courts below on the operation of section 15(4) of the Copyright Act 1969. For convenience section 15(4) of the Copyright Act is reproduced below:

"(4) If information is given upon oath to any magistrate that there is reasonable cause for suspecting that there are in any house, premises, vessel or other place any infringing copies (or any contrivance used or intended to be used for making infringing copies) or capable of being used for the purpose of making infringing copies by means of or in relation to which any offence under sub-section (1) of this section has been committed, he may issue a warrant under his hand by virtue of which any police officer named or referred to in the warrant may enter the house, premises, vessel or other place at any reasonable time by day and search for and seize any such copy or contrivance; and if a copy or contrivance is seized under this sub-section in connection with an offence and –

(a) in proceedings brought under this section in connection with the offence no order is made under sub-section (2) of this section as to the copy or contrivance; or

(b) no such proceedings are instituted within six months of the seizure,

the copy or contrivance shall be returned to the person in whose possession it was when it was seized or, if it is not reasonably practicable to return it to that person, shall be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities."

The background facts leading to this reference may be summarised as follows. On July 16, 1981 the police raided certain premises in Ipoh and seized 286 copies of video tapes under a warrant issued by a magistrate under section 15(4) of the Copyright Act. The accused was arrested on the same day and charged in court on November 27, 1981 on two counts under section 15(1) (b) and (d) of the Act, the second charge being in the alternative. Thereafter the prosecution for some reason was unable to proceed with the case and after several postponements the case came up for hearing on September 14, 1982 when the learned magistrate discharged the accused not amounting to an acquittal after disallowing an application by the prosecution for further adjournment of the case. It would appear that the prosecution had asked for another postponement on the ground that a material witness had not been served with a subpoena. The accused was arrested again under a warrant of arrest dated October 26, 1982. The same two charges were preferred against the accused relating to the same 286 copies of video tapes which the police had seized on July 16, 1981. The learned counsel for the accused raised a preliminary objection that when the accused was discharged not amounting to an acquittal on September 14, 1982 the proceeding came to an end and the prosecution was by December 1, 1982 out of time to institute a further proceeding against the accused. The learned counsel asked that the accused be acquitted and discharged and the tapes be returned. The learned magistrate was, however, of the view that the second prosecution was a *continuation* of the first prosecution and as such it was "not caught by the six-month period" under section 15(4) of the Copyright Act. He overruled the preliminary objection. The accused appealed to the High Court.

In the High Court the appellate judge held that although the appeal was on a preliminary point it was a question of "jurisdiction" and therefore the appeal was in order. As regards the decision of the lower court the learned judge held the view that

the second prosecution should not be construed as a continuation of the first prosecution. The appellate judge then gave an interpretation of section 15(4) (b) of the Copyright Act in the following terms appearing at page 3 of his judgment:

"In my view the intention of the legislature in enacting section 15(4) (b) of the Copyright Act is that after the infringing copies are seized by the police under a search warrant issued by a magistrate proceedings for any offence under section 15(1) must be instituted within six months of the seizure. If no proceedings are instituted within the six months the copies have to be returned to the person from whom they were seized or be dealt with in accordance with the provisions of section 15(4) of the Copyright Act."

The appellate judge then concluded that as the second proceeding was not instituted within six months provided by section 15(4), the magistrate's court had no jurisdiction to take cognisance of the offence.

In our view it is not important for the purpose of determining the proper construction of section 15(4) of the Copyright Act to construe whether the second prosecution in this case was a *continuation* of the first prosecution. A careful reading of section 15(4) will show that the provision deals with the central question of disposal of contrivance or infringing copies and not with prosecution. It is clear from the provision that where after a prosecution no order is made by the court on the infringing copy or contrivance, the copy or contrivance shall be returned to the person from whom it was seized. If this is not practicable, the copy or contrivance should be disposed of in accordance with the law regulating the disposal of lost or unclaimed property in the hands of police authorities – paragraph (a) of section 15(4). Where, however, no prosecution is instituted within six months of the seizure of the copy or contrivance, the copy or contrivance shall also be returned or disposed of in the same manner as set out earlier – paragraph (b) of section 15(4).

In the present case the first prosecution was instituted on November 27, 1981 which was well within six months of the date of the seizure which was July 16, 1981. Therefore paragraph (b) of section 15(4) of the Act was already satisfied. The fact that the accused was discharged not amounting to an acquittal subsequently did not affect the operation of section 15(4) of the Act.

As regards paragraph (a) of section 15(4) of the Act it can be seen from the facts set out earlier that the proceeding did not really come to an end. The reason for the application for adjournment was not because the prosecution did not elect to proceed with the case but because an important witness could not be served with a subpoena. In our view paragraph (a) envisages a finality in the proceeding which is not the case here. Any order made would be in pursuance of the power given by sub-section (2) of section 15 where it is expressly provided that the court may *at the conclusion of the trial* whether the alleged offender is convicted or not order the disposal of the infringing copies or contrivance (emphasis provided).

The central subject of section 15(4) of the Copyright Act 1969 is the return or disposal of the infringing copies or contrivance seized under that provision. It would be wrong to construe section 15(4) of the Act as a provision laying down a timetable for prosecution.

The answer to the question posed is therefore in the negative.

Question answered.

Solicitors: *Asbir, Hira Singh & Co.*

STATE GOVERNMENT OF PERAK v. MUNIANDY

[S.C. (Abdul Hamid C.J. (Malaya), Hashim Yeop A. Sani & Abdoolcader S.C. JJ.) January 21, & December 7, 1985]

[Ipoh – Supreme Court Civil Appeal No. 258 of 1983]

Tort – Negligence – Vicarious liability – Driver driving in course of employment – Duty to persons carried on vehicle – Whether any prohibition to carry passengers – Pleadings.

Practice and Procedure – Pleadings – Parties bound by them.

In this case the respondent, who was an employee of the appellant, hitched a ride in a lorry belonging to the appellant and driven by an employee of the appellant. The driver was on duty at the time and was driving the lorry in the course of his employment. The respondent was going home to hand over his pay to his wife. On the way the lorry met with an accident and the respondent was injured. The driver of the lorry admitted liability and also admitted that he did not object to the respondent taking a lift on the lorry and he did not tell the respondent that he could not ride on the lorry. The learned trial judge held that the appellant was vicariously liable. The appellant appealed.